

REMARKS

This responds to the Office Action dated August 16, 2005 and the Advisory Action dated November 1, 2005. The specification has been amended to update the priority. Claims 1 and 15 and withdrawn claims 4 and 18 are amended, no claims are canceled, and claims 39-41 are added. New claims 39-41 correspond to allowed claims 2, 16, and 20 in independent form without amended language now included in their base claims 1 and 15. Thus, new claims 39-41 are believed to fall within the elected species.

Claims 1-41 are currently pending. Of these currently pending claims, claims 3-5, 7-14, 17-19 and 23-38 currently stand withdrawn and claims 1-2, 6, 15, 16, 20-22 and 39-41 are currently being examined.

Telephone Interview

A telephone interview was conducted on November 9, 2005 between Examiner Thomas Noland and Applicant's representative Marvin Beekman. The Examiner is thanked for the courtesy extended in the telephone interview. The rejection to claim 1 using Simon et al. was discussed. Applicant noted the identified sensor in Simon et al. is located in each sludge gate, and that the PLC was not illustrated as being located in the sludge gate. Thus, the sensor in a sludge gate did not include a PLC/receiver. The Examiner indicated that the whole Simon et al. system was considered to be a sensor.

Applicant proposed an amendment to claim 1, as reflected in the current amendment to claim 1, intended to clarify the intended scope of the claim by bringing the language of the preamble into the body of the claim. The Examiner indicated that, with the proposed amendment, he would find claim 1 to be allowable over the art currently of record at the time of the interview.

Information Disclosure Statement

Applicant submits a Supplemental Information Disclosure Statement and a 1449 Form with this Response. Applicant respectfully requests that an initialed copy of the 1449 Form be

returned to Applicants' Representatives to indicate that the cited reference has been considered by the Examiner.

Claim Objections

Claims 15-16 and 20 were objected to due to informalities. Applicant has amended independent claim 15 to recite --the flow controller-- rather than “the mass flow controller” in line 8. A flow controller was introduced in line 3 of claim 15. Applicant thanks the Examiner for identifying this inadvertent error. Applicant respectfully submits that the amendment to claim 15 does not change the intended scope of the claim. Withdrawal of the objection is respectfully requested.

§102 Rejection of the Claims

Claims 1 and 15 were rejected under 35 U.S.C. § 102(e) for anticipation by Simon et al. (U.S. 6,447,674). Applicant respectfully traverses for at least the following reasons.

Applicant thanks the Examiner for further clarifying the rejection in response to Applicant's request in the previous Response. In Paragraph 4, the present Office Action indicates that a gate position sensor is disclosed in claim 8 lines 2-3, and infers that the sensor includes a transmitter in view of the signal transmission to the PLC (claim 8, lines 4-5). The Office Action further indicates that the PLC corresponds to the receiver.

Claim 1, for example, of the present application recites a gate position sensor, and FIG. 1, for example, of the present application illustrates a flow controller with a gate position sensor 116. The illustrated sensor 116 includes both a transmitter 134 and a receiver 138. The Office Action dated August 16, 2005 states: Simon discloses . . . at least one position sensor located within each of said sludge gates. Applicant respectfully submits that the position sensor recited in claim 8 of Simon is distinct from the PLC. The PLC in FIG. 1 is not located in the sludge gates. The position sensor does not include the PLC. Thus, the position sensor does not include at least a receiver as identified in the present Office Action as the PLC.

Independent claim 1 recites a gate position sensor. With respect to claim 1, Applicant is unable to find, among other things, in the cited portion of Simon a gate position sensor comprising a transmitter and a receiver, as recited in the claim. The recited transmitter transmits

a signal in a flow controller, where a position of a gate in the flow controller affects the signal. The recited receiver receives the signal, where the receiver is adapted to provide a signal output for the sensor to indicate a gate position within the flow controller based on the signal received. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claim 1.

Independent claim 15 recites a system comprising, among other things, a gate position sensor. The recited gate position sensor includes means for transmitting a signal in the flow controller and means for receiving the signal. Applicant is unable to find, among other things, in the cited portions of Simon a system that comprises a gate position sensor that includes both means for transmitting a signal and means for receiving the signal and providing a signal output for the sensor to indicate a gate position within the flow controller based on the signal received. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claim 15.

Allowable Subject Matter

Claims 6 and 21-22 were allowed.

Claims 2, 16, and 20 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Allowable claims 2, 16, and 20 have been rewritten into independent form as new claims 39-41, which are believed to be in condition for allowance. Claims 2, 16, and 20 are believed to be in condition for allowance at least for the reasons provided with respect to their independent base claims.

Consideration of Withdrawn Claims

Applicant respectfully requests consideration of all other species in Group I (withdrawn claims 3-5, 7-14, 17-21 and 23-25) upon the allowance of claim 1. Claim 1 has been amended. Should claim 1 be found to be allowable but no longer generic to the withdrawn claims, Applicant respectfully requests an opportunity to amend the withdrawn claims into conformity with claim 1.

Reservation of the Right to Swear Behind References

Applicant maintains its right to swear behind any references which are cited in a rejection under 35 U.S.C. §§102(a), 102(e), 103/102(a), and 103/102(e). Statements distinguishing the claimed subject matter over the cited references are not to be interpreted as admissions that the references are prior art.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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By their Representatives,


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Date 11-16-05

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of November, 2005.

KATE GANNON
Name


Signature